

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ITI INTERNET SERVICES, INC., a
Washington corporation; et al.,

Plaintiffs,

v.

SOLANA CAPITAL PARTNERS, INC., a
California corporation; et al.,

Defendants.

No. C05-2010Z

ORDER

This matter comes before the Court on Plaintiffs' Motion for Preliminary Injunction, docket no. 16. Plaintiffs request that this Court enjoin a special meeting of HIMC Corporation's shareholders. The special shareholder meeting was ordered by the state court, in the related case of Johnson v. HIMC Corp., et al., 05-210424-0 pending in Pierce County Superior Court. The state court judge has found that the current board members of HIMC Corporation violated their fiduciary duties to the shareholders which "were designed to obstruct a lawful, fair and democratic election of a board of directors for HIMC Corp." Second Declaration of David B. Adler, docket no. 45 at paragraph 2. The purpose of the special shareholder meeting is to elect new board members; the meeting is scheduled for February 23, 2006. See docket no. 29, exhibit 2.

1 To obtain a preliminary injunction, the moving party must show either a likelihood of
2 success on the merits and the possibility of irreparable injury, or that serious questions going
3 to the merits were raised and the balance of hardships tips sharply in its favor. Prudential
4 Real Estate Affiliates v. PPR Realty, 204 F.3d 867, 874 (9th Cir. 2000). These are not
5 separate tests, but rather “opposite ends of a single continuum in which the required showing
6 of harm varies inversely with the required showing of meritoriousness.” Rodeo Collection,
7 Ltd. v. West Seventh, 812 F.2d 1215, 1217 (9th Cir. 1987) (quotation and citation omitted).

8 Plaintiffs in this action allege the special shareholder meeting will cause irreparable
9 harm to them and interfere with this Court’s ability to grant relief for their federal claims in
10 this action. However, the state court ordered that there be no delay in the special shareholder
11 meeting, and presumably any delay would cause harm to Defendants as shareholders of
12 HIMC. See Partial Summary Judgment, docket 29, exhibit 2. The Court must balance these
13 hardships to determine if an injunction is warranted.

14 Plaintiffs assert that if the meeting is held, they would suffer harm because (1) they
15 will loose control of the board; (2) persons “unfamiliar with on-line payments industry” will
16 be elected to the board; (3) Plaintiffs will be fired from their jobs; (4) the new board will “in
17 all likelihood” cancel their stock; (5) Plaintiffs will be unable to defend anticipated future
18 litigation; and (6) there may be interference with Plaintiffs attempt to transfer stock, docket
19 no. 32 at 5. In contrast, Defendants will suffer ongoing harm if this Court allows board
20 members who have violated their fiduciary duties to shareholders to remain in control of
21 HIMC Corporation, docket 29, exhibit 2. There is a serious question as to whether the Court
22 has subject matter jurisdiction. See 28 U.S.C. § 2283. However, the Court concludes that
23 even if the Court has jurisdiction as a result of the Securities Exchange Act of 1934, an
24 injunction is not appropriate in this case. The state court judge has already held individual
25 Plaintiffs Ron Ehl, Pamela Ehl, and Virgil Llapitan in this action in contempt of court
26 because of ongoing violations of their duties, docket no. 45, exhibit 1. In consideration of

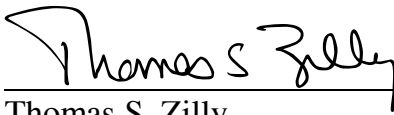
1 the harm that would be suffered by Defendants if the special shareholder meeting is delayed,
2 the Court concludes that the balance of harm does not favor the Plaintiffs in this action.

3 In addition, Plaintiffs have not demonstrated a likelihood of success on the merits.

4 For the forgoing reasons, the Court DENIES Plaintiff's Motion for a Preliminary
5 Injunction, docket no. 16.

6 IT IS SO ORDERED.

7 DATED this 21st day of February, 2006.

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10 Thomas S. Zilly
11 United States District Judge
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